

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Filed: March 8, 2004
49th Day: April 26, 2004
180th Day: September 4, 2004
Staff: ALB-LB
Staff Report: March 25, 2004
Hearing Date: April 14-16, 2004
Commission Action:

Item W9d**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-03-322

APPLICANTS: City of San Clemente and Orange County Transportation Authority (OCTA)

AGENT: James Pechous, City of San Clemente and Shoreh Dupuis, OCTA

PROJECT LOCATION: Along the shoreline within the OCTA right-of-way from North Beach to Calafia State Park (approx. 2.37 miles), San Clemente, Orange County

PROJECT DESCRIPTION: Construction of a multi-use trail consisting of lateral and vertical access improvements, including formal railroad crossings, barriers to prevent unauthorized crossings, lateral pedestrian bridges, and native landscaping located along the shoreline within the Orange County Transportation Authority (OCTA) right-of-way from North Beach to Calafia State Park.

LOCAL APPROVALS RECEIVED: Adoption of Resolution No. 03-56 by the San Clemente City Council on June 3, 2003, which approved *Mitigated Negative Declaration for the Railroad Corridor Pedestrian Beach Trail in the City of San Clemente*.

SUMMARY OF STAFF RECOMMENDATION:

The applicant proposes construction of a multi-use trail along the entire length of the San Clemente shoreline. The project involves the creation of a trail using natural materials and proposes to install formal railroad crossings and fencing/barriers where informal access is currently available. The major issues of this staff report include public access and recreation, preservation of scenic resources, avoidance of wetland impacts, and water quality.

Staff recommends **APPROVAL** of the proposed development subject to twelve (12) special conditions which require 1) evidence of approval(s) by other State and local agencies; 2) evidence of approval by USACOE; 3) submittal of final sign plan; 4) monitoring and maintenance of access improvements; 5) future improvements come back to the Commission for review; 6) maintenance of public access during construction; 7) conformance with coastal engineering recommendations; 8) assumption of risk; 9) no future protective device or enhancement of existing protective device; 10) wetlands avoidance; 11) construction best management practices; and 12) debris disposal at an appropriate site.

At the time of this staff report, the applicants are in agreement with the staff recommendation and special conditions. However, three (3) protests have been filed with the California Public Utilities

Commission (CPUC) regarding the proposed project. CPUC review of the project is still pending. The basis for the objections will be discussed within the staff report.

SUBSTANTIVE FILE DOCUMENTS:

City of San Clemente Certified Land Use Plan (LUP); *Biological Constraints Analysis for San Clemente Rail Trail* prepared by Merkel & Associates, Inc. dated January 31, 2002; *Jurisdictional Wetland Delineation for the San Clemente Rail Trail Project* prepared by Merkel & Associates, Inc. dated September 17, 2002; *Coastal Engineering Analysis for Coastal Trail Accessways* prepared by Coastal Frontiers dated March 2004.

EXHIBITS:

1. Location Map
2. Project Plans
3. Fencing Types
4. Objections Filed with PUC
5. PUC Staff Prehearing Conference Statement
6. City Response to PUC Staff Objection
7. Certified LUP Access Map and Summary of Access Points
8. Visual Simulations

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions, pursuant to the following recommendation.

MOTION:

I move that the Commission approve Coastal Development Permit #5-03-322 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Approval by State and Local Agencies:

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall provide to the Executive Director a copy of permits issued by the California Public Utilities Commission, Regional Water Quality Control Board, State Lands Commission, and the County of Orange authorizing this project, or letter of permission, or evidence that no permit or permission is required. The applicants shall inform the Executive Director of any changes to the project required by the above-referenced agencies. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. Approval by USACOE

PRIOR TO COMMENCEMENT OF CONSTRUCTION, the permittees shall provide to the Executive Director a copy of a permit issued by the US Army Corps of Engineers (USACOE) or letter of permission, or evidence that no permit or permission is required. The applicants shall inform the Executive Director of any changes to the project required by the USACOE. Such changes shall not be incorporated into the project until the applicants obtain a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

3. Submittal of Final Sign Plan

- A. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the applicant shall submit a final sign plan to the Executive Director for review and approval. The plan shall include signage that directs the public to the various public access and recreation opportunities within the project limits and declares the public's right to use such

facilities. Signs shall invite and encourage public use of access opportunities and shall identify, provide information and direct the public to key locations. Key locations include, but are not limited to, public parking, parks, and visitor serving amenities. Signage shall include public facility identification monuments (e.g. vertical crossing name); facility identification/directional monuments (e.g. location of park amenities); interpretive signs, and safety signs. Signs shall also identify key habitat preservation areas, explain biology and other resource characteristics of the site, and identify restricted areas. The plan shall include the approximate siting of each sign, sign dimensions, and lettering dimensions.

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. **Monitoring and Maintenance**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a Maintenance and Monitoring Plan for the vertical and lateral access improvements. The plan shall demonstrate that the trail and crossing structures are inspected and maintained to prevent unsafe access conditions and to ensure that any portions of the access improvements that may become damaged do not enter the beach. The plan shall also demonstrate that the barrier system along the lateral accessway provides effective safety controls and is functional throughout the life of the project. The plan shall include, at a minimum, the following items:
 - 1. A schedule for inspection of the vertical and lateral access improvements by a qualified professional. In addition to periodic inspection, the inspection of the access improvements shall occur after high surf and/or railroad armoring activities.
 - 2. A contingency plan for debris removal in case of damage to access improvements.
 - 3. A contingency plan for immediate barrier system repair in case of damage. The plan shall include provisions for interim barriers while repairs are being undertaken.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. **Future Improvements**

This coastal development permit (5-03-322) is only for construction of vertical and lateral access improvements along the railroad corridor, as expressly described and conditioned herein. Any plans for non-exempt future improvements or development, including but not limited to the construction of additional crossings, fencing/barriers, lighting, and/or protective

devices, shall be submitted for Commission review and shall not commence unless Commission approval is granted. New development, unless exempt, shall require an amendment to this permit or a new coastal development permit from the Coastal Commission or its successor agency.

6. Maintenance of Public Access

The construction activities authorized pursuant to Coastal Development Permit No. 5-03-322 shall not obstruct public access to San Clemente's beaches during the peak use season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year. In addition, the applicant shall comply with the following:

- 1) In the event that any vertical accessway to the beach is not open for public use during the "off" peak use season due to construction activities associated with the Railroad Corridor Pedestrian Trail project, signage shall be posted on site identifying the nearest public accessway providing safe railroad crossing.
- 2) The staging area for construction of the project shall not obstruct vertical or lateral access.
- 3) Public parking areas shall not be used for staging or storage of equipment during the peak use season.
- 4) Lateral public access along the beach shall remain available year-round.

7. Conformance with Coastal Engineering Recommendations

- A. All final design and construction plans, including foundation plans for the vertical crossings, shall be consistent with all recommendations contained in the *Coastal Engineering Analysis for Coastal Trail Accessways* prepared by Coastal Frontiers dated March 2004.
- B. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced coastal engineering evaluation approved by the California Coastal Commission for the project site.
- C. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding, wave uprush and boulder placement and/or movement; (ii) to assume the risks to the applicants and the property that is

the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Special Conditions"); and (2) imposing all Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.
- C. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

9. **No Future Shoreline Protective Device**

- A(1). By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no new shoreline protective device(s) or enhancement of the existing protective device shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-03-322 in the event that the development is threatened with damage or destruction from boulder placement, waves, erosion, storm conditions or other hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2). By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the applicants shall remove the development authorized by this permit, including the vertical and lateral access improvements, if any government agency has ordered that the structures are not to be utilized due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the applicants shall be jointly and severally liable for removal of all recoverable debris associated with the development from the beach and ocean and lawful disposal of the material in an approved disposal site. Such removal shall require a coastal development permit.
- B. **PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT**, the applicants shall execute and record

a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Special Conditions"); and (2) imposing all Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant's entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the subject property.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit a written agreement in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

10. Avoidance of Drainages and Wetlands

- A. The permittees shall comply with the following drainage and wetlands avoidance requirements:
1. The on-site drainages and wetlands shall not be impacted by the project. All plans and specifications for the project shall indicate that impacts to the drainages and wetlands shall be avoided and that no impact to the drainages and wetlands is authorized by the California Coastal Commission.
 2. A buffer shall be established between all work approved by this permit and any drainages and wetlands. Prior to commencement of any work approved by this permit, a temporary barrier or work area demarcation (such as but not limited to plastic mesh, solid wood or chain link fencing) shall be placed between the construction areas and the buffer protecting the drainages and wetlands. Barriers and other work area demarcations shall be inspected and approved by a qualified biologist. All temporary barriers, staking, fencing shall be removed upon completion of the proposed development.
 3. Any inadvertent impacts to drainages or wetlands by the proposed development shall be reported to the Executive Director within 24 hours of occurrence and shall be mitigated. Such mitigation shall require an amendment to this permit or a new permit unless the Executive Director determines that no amendment or new permit is required.
 4. No construction materials, debris, or waste shall be placed or stored where it may enter areas containing drainages or wetlands;
 5. No equipment shall be staged or stored within any habitat area or within 100 feet of any drainages or wetlands;
- B. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the permittees shall submit a revised site access, staging, work area and equipment storage plan(s) which conforms with the requirements of subsection A.1 through A.5. of this special condition. The permittees shall undertake development in accordance with the approved final plan(s). Any proposed changes to the approved final plan(s) shall be reported to the Executive Director. No changes to the approved final plan(s) shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

11. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.
- (d) Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition No. 12.

12. Location of Debris Disposal Site

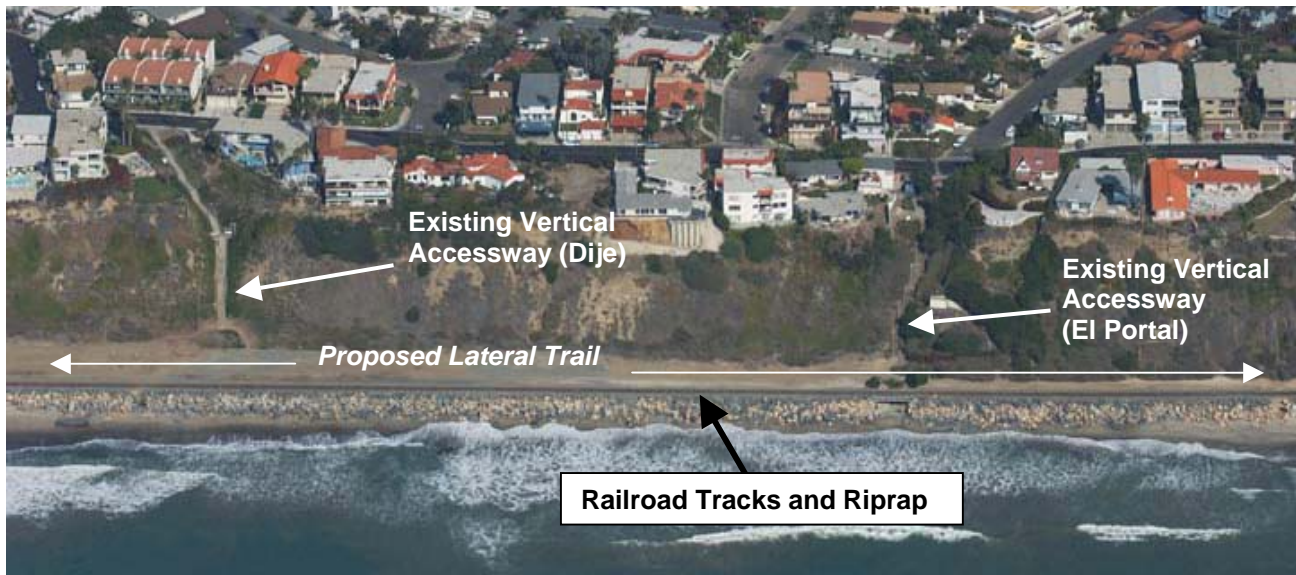
The applicants shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT LOCATION, DESCRIPTION AND BACKGROUND

The City of San Clemente and the Orange County Transportation Authority (OCTA) are proposing to improve lateral and vertical beach access within the railroad corridor from North Beach to Calafia State Park in the City of San Clemente, Orange County (Exhibit 1). The project will occur within a 100' wide OCTA right-of-way for a length of approximately 2.37 miles. The project begins at a Metrolink rail station within the northernmost portion of San Clemente and terminates at State Park property in the southernmost portion of the City. (CA State Parks declined an invitation to become a co-applicant in the current application.) The railroad corridor is situated between the ocean and the toe of a coastal bluff system that extends the length of the City, as depicted below.



Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, www.californiacoastline.org

Within the project area, the railroad tracks are located between the first public road and the sea, separating beachgoers from the sandy beach. The railroad tracks have a rip-rap revetment that protects the tracks from erosion and wave overtopping. There are 18 designated vertical access points in the City's certified Land Use Plan (LUP). Many of these designated vertical access points are located at the terminus of public stairways leading down the bluff face. Although the number of crossings is higher at these points, the public can access the beach by crossing the tracks at virtually any point along the corridor. At present, there is only minimal fencing along the tracks and that is focused in the vicinity of the Municipal Pier. The only public railroad crossings that are recognized by the CPUC are located at the Municipal Pier (two crossing points) and Calafia State Park.

No lateral access within the right-of-way is currently authorized by any of the rail agencies and is, in fact, considered trespassing by those rail agencies. Nonetheless, the public continually travels along an informal trail that exists inland of and parallel to the railroad tracks, seaward of the toe of bluff. Therefore, track crossings occur along the entire length of the railroad corridor, presenting an obvious safety hazard. There is also a safety concern due to a number of "pinch points" along the informal trail that force people to walk very close to and/or on the tracks when traveling laterally.

The City and OCTA propose to improve the current access conditions within the railroad corridor by creating the San Clemente Railroad Corridor Pedestrian Beach Trail, a multi-use trail along the entire length of the corridor. The proposed trail will follow the general alignment of the existing informal trail, but will include design controls to minimize safety hazards associated with rail crossings. The trail will begin on the east (inland) side of the tracks south of the Metrolink Commuter station at North Beach. From North Beach, the trail will extend south to Corto Lane. At Corto Lane, the trail will cross the tracks and continue southward on the west (seaward) side of the tracks until it reaches the T-Street restrooms. The trail will then cross back over to the east side of the tracks and continue to its endpoint at Calafia State Park.

The applicants propose to create a well-defined trail with barriers between the pedestrians and the railroad. The trail will accommodate two-way, non-motorized uses and limited motorized uses (motorized wheelchairs, maintenance equipment and emergency vehicles from the Pier to T-Street). The project is a multi-use trail that will allow walkers, joggers, mountain bicyclists, and wheelchair users. Maintenance vehicles and equipment will also use the railroad right-of-way. The trail is comprised of four components: the trail, fencing and barriers, crossings, and landscaping, as described below. Project plans are included as Exhibit 2.

1. Trail

The trail will be 5' wide in either direction (10' total width) to allow sufficient width for maintenance vehicles. The edge of the trail will be located a minimum of 15' from the centerline of the railroad tracks. The majority of the trail will be constructed of stabilized decomposed granite or natural soil (existing conditions). An 8' wide elevated wooden walkway supported by caissons is proposed along an approximately 975' long stretch of the trail at Mariposa Point. The elevated walkway is proposed for safety considerations as the trail in this particular area curves around a narrow point and gets very close to the railroad track. The walkway design addresses the safety concerns at this point by separating pedestrians from the tracks as much as possible. To do this, the trail must be sited as close to the toe of the bluff as possible. The utilization of an elevated walkway supported by caissons minimizes any grading of the toe of bluff. In addition to the elevated walkway, four (4) new pre-fabricated bridges are proposed to span existing drainage courses along the lateral trail. The proposed clear-span bridges will not require any modifications to the drainage courses or result in the fill of coastal waters. New bridges will be constructed of wood. Minor grading is proposed for site preparation and drainage improvements.

2. Fencing and Barriers

Fencing and/or natural buffer treatments are proposed between the trail and the railroad tracks along the inland side of the tracks. As shown on the plans, some form of barrier (or combination of barrier types) would extend laterally along either side of authorized crossing points for a distance of 150 feet. These controls are intended to ensure safe use of the trail by funneling users to new improved crossing points, thereby deterring uncontrolled crossings. There are several types of barriers and/or buffers proposed, depending on the location. These include native landscape restoration planting areas; new boulders; 2' high railroad tie buffer walls; 4' high three-rail fencing; 3' high two-rail fencing; new 5'6" high welded wire fencing; and 5'6" high welded wire fencing to replace a fence washed out by the El Niño storms. Fencing types are shown in Exhibit 3. The welded wire fencing will only be used along a very limited stretch of the overall project area, as will be discussed in the Public Access Section. Rock mulch would also be used as a further walk deterrent in restricted areas.

3. Railroad Track Crossings

The project involves the improvement and formalization of nine (9) existing vertical railroad crossings.¹ As shown in the project plans, these will be located at Dije Court, El Portal, Linda Lane, Corto Lane, T-Street, Lost Winds, Riviera, Montalvo and Calafia. Of the thirteen (13) vertical accessways identified in the certified LUP within this stretch of the City, nine (9) will be improved, three (3) will remain unchanged, and one (1) will be closed for safety reasons. Pedestrians reaching the closed access point will be redirected to a nearby alternative crossing. Where possible, the applicants are proposing to funnel pedestrian traffic from a broad relatively un-defined crossing area to one specific, defined crossing point to minimize the number of crossings within a relatively short distance.

The applicants considered various crossing types (at-grade, undercrossing and overpass) based on level of usage, physical constraints, and cost. Although grade separated crossings (i.e. undercrossings and overpasses) are preferred by the rail agencies, the physical constraints and cost of installing only grade-separated crossings was prohibitive for the current project, as will be discussed further in the report. As such, the majority of vertical access improvements will include at-grade crossings. Two of the access points (Linda Lane and El Portal) will include both an at-grade crossing and an underpass. At-grade crossings are proposed for seven (7) of the vertical access points, including Dije Court, El Portal, Linda Lane, Corto Lane, T-Street, Lost Winds, and Calafia. Improved undercrossings are proposed for three (3) of the access points, including El Portal, Linda Lane and Riviera. No vertical access improvements are proposed at the North Beach, Pier, or Boca del Canon access points.

Improved at-grade track crossings will be constructed of asphalt and concrete surfaces. In cases where rip-rap is located on the seaward side of the crossing, a meandering cement stairway will be installed down the rocks for access to the beach. The project involves the placement of Number 9 signals on the inland side of the tracks and Number 8 signals on the ocean side. Number 9 signals utilize flashing lights, bells and an automated arm to warn pedestrians of an on-coming train, whereas Number 8 signals have only lights and bells. The applicants indicate that the proposal allows for an “escape route” if the arm comes down while someone is crossing.

4. Landscaping

The project involves the use of native landscaping for native restoration and buffer planting. Landscaping will be used as barriers to unauthorized crossings and to identify authorized crossing points. The applicants propose to replant native vegetation in barren areas along the trail that may have been occupied by native plants at some point in the past. The landscaping will include plants and shrubs that are relatively small in scale. No large trees are proposed.

The project involves the placement of regulatory signage to specify use restrictions. The project also involves the placement of directional signage to identify access points, parks, transit stations and other points of interest. Temporary signs may also be used to caution users of hazardous

¹ The CPUC only recognizes 3 public railroad crossings within the project area—the Pier at-grade crossing, the Pier undercrossing, and the Calafia at-grade crossing. However, the Coastal Commission recognizes 13 vertical access points within the project area through its certification of the City’s Land Use Plan (18 access points Citywide).

conditions, such as during high tide episodes when water may block the undercrossings or when there may be sand or water on the trail.

Construction of the proposed improvements will be carried out using the following types of equipment: crane, truck, backhoe, wheeled loader and bulldozer. A concrete pump may also be needed to construct the crossings. Construction is anticipated to last approximately 24 months, to commence in early Fall 2004 and be completed by Fall 2006. Throughout the construction process, beach access will be maintained. Staging of equipment and materials will occur in designated areas that are well protected from wave uprush, including adjacent streets and parking lots. Some equipment may be stored on available areas between the railroad track and the toe of bluff where space allows, such as at Dije Court and Linda Lane. No equipment will be stored on the sandy beach, near wetlands or within drainage courses.

The proposed project requires approval by the US Army Corps of Engineers, the Regional Water Quality Control Board, CA State Parks Department, CA Department of Fish and Game, CA State Lands Commission, CA Public Utilities Commission (CPUC) and the County of Orange. To date, the applicants have received verification from CA State Parks and CA Department of Fish and Game that no approvals are required for the proposed project. Approvals are still pending with the remaining regulatory agencies. Formal objections to the project have been filed with the CPUC by CPUC staff, Caltrans and Burlington Northern and Santa Fe Railway Company (BNSF). (These objections will be discussed in Section B of the current staff report.) The Commission needs to ensure that approvals from other regulatory agencies are obtained and must be informed of how those approvals affect the project (if at all). As such, the Commission imposes Special Conditions 1 and 2. Special Condition 1 requires evidence of approval from all outstanding State and County agencies. Special Condition 2 requires evidence of approval from the US Army Corps of Engineers.

B. OBJECTIONS FILED

The project requires approval by the California Public Utilities Commission (CPUC). The City of San Clemente and OCTA applied to the CPUC on October 27, 2003. The CPUC has a quasi-judicial process that allows interested parties to protest applications, which are then assigned to an administrative law judge who holds hearings and presents findings and recommendations to the Commission. Three (3) protests were filed with the CPUC. Protests were filed by the CPUC staff, Caltrans and the Burlington Northern and Santa Fe Railway Company (BNSF) in late November/early December 2003. Following is an outline of the objections raised by the various parties. The full text of the objections is attached as Exhibit 4.

CPUC Staff Objection (Exhibit 4a)

CPUC staff opposes the construction of the proposed at-grade crossings as serious safety hazards for the reasons summarized below.

1. Insufficient Safety Precautions
2. Failure to Demonstrate that Grade Separations are not "Practicable"
3. Inadequate Measures to Prevent Trespassing by Pedestrians
4. Unreliable Grade-Separated Undercrossings
5. Insufficient Landing Areas for Pedestrians
6. Insufficient Lighting
7. Failure to Address Enforcements Against Trespassers Using ROW
8. Failure to Comply with the CPUC's Prior Decision Concerning the Calafia Beach At-grade Crossing

BNSF Objection (Exhibit 4b)

The BNSF objection addresses the following points:

1. The project will result in an increase in pedestrian traffic on the right-of-way, which is incompatible with use as a high speed rail corridor.
2. Request to construct additional at-grade crossing inconsistent with current state and national policy calling for elimination of existing railroad grade crossings.
3. Trial meanders in close proximity to railroad tracks. Inadequate safety measures are proposed.
4. Concerns expressed by CPUC staff and railroads should be addressed.
- 5.

Caltrans Objection (Exhibit 4c)

The Caltrans objection raises the following issues:

1. The project will result in increased pedestrian traffic, which is incompatible with the right-of-way's use as a federally designated high speed passenger rail corridor.
2. Request to construct additional at-grade crossing inconsistent with current state and national policy calling for elimination of existing railroad grade crossings.
3. Additional crossings are inconsistent with plans to provide improved intercity passenger rail in the LOSSAN (Los Angeles San Diego) corridor.
4. Proposal is inconsistent with the LOSSAN Corridor Specific Plan.
5. At-grade crossings and other "attractive nuisances" such as easily compromised fences present safety concerns.
6. City has ignored safety concerns raised by rail agencies.

In February 2004, CPUC staff submitted a prehearing conference statement, which further explains their objection (Exhibit 5). The statement expands on objections against each proposed crossing, both at-grade and undercrossings. CPUC staff asserts that the crossings are sited too closely together. The staff also states that storm drains should not be used as undercrossings due to potential for flooding in the rainy season and "uninviting" conditions during the dry season.

Response to Objections

The City has prepared a summary response to the PUC staff objection (Exhibit 6). The City maintains that the proposal *"eliminates innumerable existing crossings of the railroad by the public attempting to access the beach"* and will increase safety within the rail corridor. The City asserts that grade separations at every access point are physically infeasible given the soil, topography, elevation of the railroad tracks and water conditions. The City has proposed grade separation in the form of undercrossings where feasible. When the undercrossings are impassable during the storm season, pedestrians will be directed to at-grade crossings. Another point addressed in the City's response is the use of fencing along the rail corridor. The proposal provides a combination of barrier types (including vegetation and 3'-4' high fencing) to channel pedestrians to safe crossing points. As stated in the City's response, *"more heavy-duty fencing would not be compatible with community values or Coastal Commission requirements, and would be the target of considerable attempts to gain entry through construction fences at inappropriate and unnecessary locations."*

Public access and the safety of that access are naturally tied to one another. The City and OCTA have carefully studied the safety issues at the subject site and have devised the proposed project based on their long-term experience dealing with the present unsafe conditions of public access along the shoreline within the City. The applicants have indicated that a more structural approach is essentially a "no-project" alternative, whereas existing conditions will remain unchanged. The

proposal will do nothing more than improve safety compared with existing conditions; it will not create an unsafe condition.

The Commission acknowledges that the charges of the Coastal Act and the Public Utilities Commission differ. Many of the issues addressed in the objections to the PUC do not raise significant issues of consistency with the Coastal Act. Where issues of consistency arise, the Commission has imposed appropriate special conditions to ensure conformance with the Coastal Act.

C. PUBLIC ACCESS

Section 30212(a)(2) of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby

Section 30213 states, in pertinent part.

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

The City of San Clemente certified LUP contains various coastal access policies pertaining to the currently proposed project, including the following:

Policy IX.1 *Improvements to beach facilities and beach access points which are administered by the City of San Clemente shall specifically be intended to provide for the maintenance and enhancement of maximum public use of the beach and ocean.*

Policy IX.2 *Monitor and attempt to improve the safety of pedestrians crossing El Camino Real and the railway along the coast. Specifically, the city shall work with OCTA to implement a safe and legal railroad crossing at Linda Lane Park, at an existing access centrally located between Linda Lane Park and North Beach, and at an existing access centrally located between T-Street and Calafia State Beach.*

Policy IX.4 *The maintenance and enhancement of public non vehicular access to the shoreline shall be of primary importance when evaluating any future public or private improvements in the Coastal Zone.*

Policy IX.6 *Develop a comprehensive network of improved beach access facilities at all designated primary beach access points which will ultimately provide safe access to all City owned beaches.*

Policy IX.7 *The City shall promote not only increased access to the shoreline, but increased safety of access. Improved access for the handicapped shall be provided at at least one of the primary access points administered by the City.*

Policy IX.11 *Funding shall be actively sought to maintain and improve existing accessways. The City shall seek funding for projects that will enhance public access, including:*

- *Improved pedestrian railroad crossing through the construction of at-grade, above-grade, or below-grade crossing at existing accessways.*
- *Additional off-street public parking spaces to serve beach accessways through the maximized use of existing beach parking lots and creation of new parking lots where feasible.*

Section 30604(C) of the Coastal Act requires that permit applications between the nearest public road and the shoreline of any body of water within the coastal zone shall include a public access and recreation finding. The proposed development is located between the sea and the first public road. In San Clemente, the railroad tracks separate the community from the shoreline. As shown in the certified LUP, vertical public beach access is available at 18 points along the San Clemente railroad corridor (Exhibit 7a). A summary of existing access points is also provided in the LUP (Exhibit 7b). Thirteen (13) of these points are located within the current project boundaries. Lateral access to the Pacific Ocean and sandy beach is available immediately seaward of the railroad tracks. An informal trail also exists immediately inland of the railroad tracks. The trail is heavily utilized by walkers, joggers and mountain bicyclists.

Most sections of the informal lateral trail are not maintained nor officially recognized by the City, OCTA, or any other rail agency. (The service road between the Pier and T-Street is officially recognized by OCTA and maintained by the City.) Due to limited space between the tracks and the coastal bluffs, poor drainage and rip rap placed along the right-of-way by OCTA maintenance crews, trail users have to cross or go onto the tracks when traveling along the trail. As described in the Mitigated Negative Declaration, this creates an *“uneven, sometimes discontinuous and dangerous trail.”* Crossings of the track can occur at virtually any point along the trail, as only a small portion is fenced.

According to statistics provided in the MND, the City experiences over 2.3 million beach visitors annually. All of which must cross the OCTA right-of-way to get to the beaches. The railroad corridor is used by both tourists and local residents as a means of reaching the beach and as a transportation conduit between the northern and central parts of the City.

Multiple accidents between pedestrians and trains have occurred along the tracks, some of them fatal. A number of the accidents have been attributed to pedestrians being unaware of an approaching train, whereas others have been attributed to suicide.

As a result, the City of San Clemente has been working since 1995 on efforts to improve safety along the existing coastal trail. According to information provided by the applicants, the initial trail design was rejected by the community due to its overly engineered approach, elimination of many existing public coastal access points, proposed five foot high fences throughout the project, and the inclusion of seawalls that encroached onto the City's already receding beaches. This resulted in the appointment of the Railroad Corridor Safety and Education Panel (RCSEP). The RCSEP was made up of a diverse group of stakeholders involved in the process to that point, including community, environmental, railroad agencies, business representatives, City Council and staff, California State Parks, Orange County Transportation Authority (OCTA, the railroad corridor owner), along with others. These groups were charged with building consensus which would provide a blueprint for a more sensitively designed project that the community, the City and OCTA could support.

The current proposal is the outcome of the RCSEP's work with the community to develop a plan to

improve safety, while maintaining public access and avoiding a highly structural design alternative. The current proposal avoids the need for new shoreline protective devices and also minimizes the use of visually obtrusive fencing. The current proposal is intended to *“manage and channel pedestrians movements that are scattered along (and sometimes on) the track into 13 formal crossing locations”* within the project boundaries. Specifically, the proposed project is anticipated to improve safety by controlling railroad crossings.

As described previously, there are currently 18 coastal access points identified in the certified LUP. Of the 13 crossings presently identified in the project area, 3 crossings will remain unchanged as part of this project—North Beach, Municipal Pier and Boca del Canon. Nine crossings will be improved in their current configuration and one will be eliminated for safety and consolidation purposes (Mariposa Point). The new project proposes 9 crossing locations, with two locations having both an at-grade crossing and undercrossing. The applicants have indicated that consolidation is proposed to create improved crossings at the most safe and heavily frequented points along the trail. Consideration was given to the distance pedestrians will walk before looking for more accessible (albeit unauthorized) crossings. The consolidation of the Mariposa Point crossing is proposed to eliminate a safety hazard at a very narrow section of the trail. Pedestrians will be directed approximately 750 feet downcoast to the alternative crossing at Linda Lane. This is consistent with the LUP policy IX.7, which encourages increased safety of access.

The proposal provides a combination of fencing, vegetation, topographic barriers and an elevated walkway to channel pedestrians to safe crossing points. The CPUC and rail agencies encourage the use of more restrictive fencing, such as 5' to 6' high chain length or wrought iron along either side of the railroad tracks. The City has expressed concern that more heavy-duty fencing would not be compatible with community values and would be the target of considerable attempts to gain entry through fences at inappropriate and unnecessary locations. The erection of such fencing would present a physical barrier to continued public use and enjoyment of the subject area. In addition, fencing along either side of the tracks would adversely affect public views of the ocean, as will be discussed in the following section.

The project will allow continued lateral and vertical access within the railroad corridor, albeit in a modified manner. The proposal provides a combination of fencing, vegetation, topographic barriers and elevated walkway to channel pedestrians to safe crossing points. The lateral trail will be improved through the placement of new surface material and drainage improvements. The trail will no longer become muddy and uneven after rains. Additionally, the elevated walkway will allow pedestrians to more safely travel around a pinch point (known as Mariposa Point). Although the proposed project will modify the use pattern of pedestrians, the project will provide comparable access in a more safe manner than currently exists.

After project implementation, the City will work with the Orange County Sheriff's Department to enforce trespassing regulations. Enforcement has been difficult in the past because a formal trail system was not established. An educational campaign is proposed to ensure proper use of the trail in the future. Informational signage is also proposed to provide awareness for railroad safety. The applicants have indicated that a sign program is being developed and will include verbiage for appropriate trail usage. The phrase “No RR Trespassing” with appropriate code enforcement language will be stenciled on fence railings and on posted signs where no fence is proposed. A final signage plan has not been submitted. As signage is an important component of a public access program, the Commission imposes Special Condition 3, which requires the submittal of a final signage plan.

The applicants considered various alternatives when developing the proposed plan. The physical constraints and cost of creating grade separations make them not practicable. For example, the

span of an overpass would require substantial landing space on both the inland and the seaward side of the tracks. In many areas, the area seaward of the tracks is periodically inundated with water, making it unsuitable for an overpass landing. Steep coastal bluffs exist inland of the tracks, limiting allowing landing space. In addition, much of the property on the inland side is privately owned. Where feasible, undercrossings are being proposed as part of the current project. If undercrossings become inundated during high tide and storm episodes, users would be directed by signage to use an alternative crossing.

As will be discussed in the Hazards Section, the proposed vertical access improvements will be periodically subject to wave uprush. The proposed stairways located along the rip rap will be particularly susceptible during high storm events. Consequently, it is necessary to regularly monitor the condition of the improvements to ensure that public access and safety are not compromised. If material from one of the stairways were to enter the beach, the safety of beachgoers would be at risk. Additionally, if the barrier system (fencing and/or vegetation) were to be damaged, lateral access could become obstructed, hindering public access. Alternatively, if the barrier were damaged to the point that pedestrians could pass unrestricted, the safety controls of the project would be ineffective. To ensure that the trail improvements are properly monitored and maintained, the Commission imposes Special Condition 4. This condition requires that damaged portions of access improvements are removed and ensures that the barrier system along the lateral accessway provide effective safety controls and are functional throughout the life of the project, thereby enhancing public access and recreation.

The proposed improvements are not expected to attract new users to the area, but will serve those already utilizing the trail. The trail is primarily used by local residents, but visitors also use the trail during the peak beach use period and special events. The City estimates that there are currently 2.2 million beach visitors per year and the numbers continue to grow. The City also estimates that approximately 5 to 6 million trips across the railroad tracks each year, necessitating the proposed safety improvements. The project will enhance public access in the area and will serve as a public recreational opportunity of statewide importance.

The proposed project is also an important component of the developing 'California Coastal Trail'. A recent report by the Coastal Conservancy² identifies the San Clemente shoreline as an area that 'needs substantial improvement' to improve public accessibility along the coastline. One of the recommendations for action to implement the Coastal Trail identified in the Conservancy's report includes supporting '...the effort by the City of San Clemente to provide a safe pedestrian and bicycle trail along the railroad right of way west of State Highway 1' [page 54]. Construction of the proposed project would result in the implementation of this recommendation within the 3-year timeframe goal established in the plan.

The project, as proposed, is consistent with the public access and recreation policies of the Coastal Act, as well as the coastal access policies of the certified LUP. If any changes are proposed by the applicants or required by other regulatory agencies, the Commission must reevaluate the project. Special Conditions 1 and 2, discussed previously, require the applicants to submit evidence of approval by other regulatory agencies. The Commission also imposes Special Condition 5, to ensure that the Commission has the opportunity to review any future improvements that could potentially affect public access.

² Coastal Conservancy. 2003. Completing the California Coastal Trail. Report dated January 2003 submitted to the Members of the Legislature pursuant to Senate Bill 908 of 2001.

Construction Impacts

While the project involves construction near existing public accessways and sandy beaches, the applicants have stated that the proposed construction activities will not obstruct either lateral or vertical access. Although the applicants intend to minimize impacts to coastal access during construction, the proposed project may take up to 24 months to complete. As such, construction will occur during the peak beach use season, typically defined as Memorial Day weekend to Labor Day weekend. To guarantee that public access is maintained during this peak beach use season, the Commission imposes Special Condition No. 6. The condition requires that, in the event that any vertical accessways are obstructed during the “off” peak season due to construction, signage shall be posted on site to notify the public of the nearest pedestrian railroad crossing. The condition also requires the applicants to avoid the use of public parking areas during the peak use season. Lastly, the condition requires the applicant to maintain existing lateral public access.

Only as conditioned for maintenance of public access does the Commission find the proposed development consistent with Section 30212 of the Coastal Act.

D. SCENIC AND VISUAL RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The City's certified LUP contains the following scenic resource policies:

Policy VII.3 (in part) *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed:*

- a. To protect public views to and along the ocean and scenic coastal areas.*
- d. Requires that projects be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development...*

The proposed project will occur along the railroad corridor, a scenic area immediately inland of the City's public beaches. The project involves the erection of new fencing, signal poles, lighting, and vegetative screening. As such, the project has the potential to impact views to and along the shoreline.

All components of the proposed project are intended to appear rustic. For example, trail surfaces will consist of decomposed granite or natural soil, and all new split rail fencing will appear to be wood. (Wood fence alternatives are proposed due to problems with vandalism and maintenance associated with real wood.) A 3'-4' high split rail fence will be used in conjunction with planting to further enhance the barriers between the trail and railroad. Fencing will not extend the entire length of the trail, but will be limited to areas immediately upcoast and downcoast of a vertical access point for a distance of 150 feet on each side of a crossing point. Vegetation will consist of native shrubs, such as saltbush. A new 5'6" high welded wire fence is proposed from Corto Lane to the Marine Headquarters and a 5'6" high welded wire fence is proposed at T-Street to replace a fence washed out by the El Niño storms. These fences are deemed necessary to ensure safe railroad

crossing at the existing restroom facilities, which are located seaward of the railroad tracks. The areas surrounding the restrooms are high pedestrian traffic areas, attracting many families with young children. In addition, the restrooms are ADA compliant, further increasing the demand to cross the tracks at these locations.

To evaluate the view impacts of the proposed improvements, the MND provides visual simulations for selected sites (Exhibit 8). The visual impact analysis indicates that the proposed development will not significantly impact public or private views. (Although not a Coastal Act concern, the majority of private views are available from residences located at higher elevations.) As viewed from the inland side of the railroad corridor, the proposed barrier system (fencing and vegetation) will result in a new view obstruction to the ocean. This will be most apparent when approaching the ocean on foot, rather than in a vehicle. The project will not be visible from a scenic highway. The project will be visible from significant public vantage points such as the Pier and public parking lots at Linda Lane and North Beach. However, the majority of the proposed barrier system will not exceed 4' in height and will not be a completely solid feature. The ocean will remain visible through and over the barrier. As viewed from the ocean, the barrier system will be sufficiently set back to preclude any view blockage of the coastal bluffs. Only a small segment of the fencing will occur seaward of the tracks and this is limited to the Pier area, where other public facilities are located seaward of the railroad tracks. Finally, these barriers are only located at the railroad track crossing points and not the entire 2.37 miles of trail. Thus, the barriers are not continuous features. Thus view impacts will only be present at these crossing points. Therefore, the proposed barriers will not result in significant adverse impacts to public views to and along the shoreline because the location, height and materials used are designed to minimize solid obstructions of views.

Another view impact to consider is the placement of new railroad crossing signals at the vertical access points. The project involves the placement of Number 9 signals on the inland side of the tracks and Number 8 signals on the ocean side. Number 9 signals utilize flashing lights, bells and an automated arm mounted on a single pole to warn pedestrians of an on-coming train, whereas Number 8 signals have only lights and bells mounted on a single pole. Both signal types are 14' high. These are necessary safety features that cannot be avoided. As with the barriers, the new signals will only be located at the railroad track crossing points. Furthermore, while the potential location of the poles is constrained by their safety function, the applicants have situated the poles such that they are set close to the tracks and off of the beach. The proposed signals (two at each of the at-grade crossing points) will have a minimal impact when considered in the context of the entire 2.37-mile long project.

The project will, in fact, create new view benefits. The creation of a formal lateral accessway along the rail corridor will result in new view opportunities that don't presently exist in any formal way. Users of the new trail will be able to enjoy views to and along the shoreline along an aesthetically pleasing, rustic path. In addition, the project is compatible with the topography and will improve visually degraded areas with use of native vegetation. As such, the project will protect coastal views and enhance the visual quality in the subject area.

While not proposed, the CPUC has recommended that the applicants use 5' to 6' high fencing along both sides of the tracks for the entire length of the project. This type of barrier system would have significant adverse view impacts due to the height and continuous length of the system. In addition, construction of long segments of fence on the seaward side of the track would result in significant encroachments upon sandy beach with attendant view (and wave hazard) impacts. The current proposal includes fencing primarily along the inland side of the tracks, immediately upcoast and downcoast of each improved vertical access points. A small segment of fencing will occur seaward of the tracks. However, this will be limited to an approximately 900 foot long stretch in the Municipal Pier area, where other public facilities are located seaward of the railroad tracks. Due to

the narrow width of the beaches in some places along the project area, fencing placed seaward of the tracks would have to be sited either on the existing rip-rap revetment or on the sandy beach. OCTA has indicated that placement of fencing on the rip-rap would present maintenance issues when additional rock placement is necessary. Fencing on the sandy beach would have significant adverse view impacts and be subject to wave uprush, presenting another maintenance issue. Debris from a failed fencing system would present an adverse visual impact, as well as a safety concern for beachgoers.

Another objection raised by CPUC and the rail agencies was that the proposed crossings have insufficient lighting. The project does not propose any lighting for the trail because the trail will be open from dawn to dusk. However, the applicants have indicated their willingness to work with the CPUC and railroads to come up with an adequate lighting scheme that is consistent with coastal requirements. However, a lighting plan has not been submitted for Commission review. Lighting has the potential to create an adverse visual impact to the public depending on the brightness and direction of the light. If the project is modified to include lighting, the applicants should consider limiting all lighting to crossing points only and directing the lighting downward and away from the water and any habitat areas.

To ensure that the Commission has the opportunity to review any plan changes (such as the addition of lighting) that are required by other state and local agencies, the Commission has imposed Special Condition 1. Special Condition 1 requires the applicants to provide evidence that approvals have been granted (or no approval is necessary) from all applicable state and local agencies. Special Condition 5, discussed previously, also ensures that the Commission has the opportunity to review any proposed improvements that could potentially affect public views.

The proposed trail project is compatible with the topography and character of the surrounding area. In addition, the project includes new native plant restoration in areas that are currently devoid of vegetation. As such, the project will enhance visual quality in visually degraded areas. As previously conditioned 1) for evidence of agency approvals and 2) to inform the applicants that future improvements be reviewed by the Commission, the Commission finds that the proposed development is consistent with Section 30251 of the Coastal Act.

E. HAZARDS

Section 30235 of the Coastal Act states, in pertinent part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Section 30253 of the Coastal Act states in relevant part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would

substantially alter natural landforms along bluffs and cliffs.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The proposed improvements will occur in an area located between the base of a coastal bluff and the sandy beach. The majority of the trail (from North Beach to Corto Lane and from T-Street to Calafia State Park) will be located landward of the railroad tracks and the associated rip-rap revetment. The middle portion of the trail (from Corto Lane to T-Street) will be located seaward of the railroad tracks in a section that is not protected by the revetment.

The revetment is maintained by the Southern California Regional Rail Authority (SCRRA) and the railroad right-of-way is owned by the Orange County Transportation Authority (OCTA). The railroad has a maintenance program in which additional boulders are added to the revetment to protect the track and ballast. During high surf events, the railroad also monitors the conditions of the railroad to ensure that the tracks are not flooded for safe operation of the trains.

The project involves work seaward of the railroad tracks. As such, portions of the project will be subject to periodic wave uprush. Development in such a location is inherently risky. To determine the potential hazard resulting from wave uprush, the applicants submitted a report entitled *Coastal Engineering Analysis for Coastal Trail Accessways* prepared by Coastal Frontiers dated March 2004. The report estimates the scour and wave loading potential at the proposed vertical access points. The report's conclusion provides information to be used in the final structural design of the proposed vertical accessways, including median stone weight for hydraulic stability, horizontal wave forces at the revetment, and maximum uplift forces associated with wave runup on the revetment. The Commission's Senior Coastal Engineer has reviewed the report and supports the conclusions contained therein. Nonetheless, the applicants have not yet submitted final structural drawings for the proposed crossing improvements. The applicants state that stairways will be installed following USACOE standard specifications for stone work installation for coastal shore protection. The proposed stairs will be concrete steps formed between structurally engineered boulder rip-rap. The new stairways will be constructed such that they will in no way depend on the existing protective device for support or upon any shoreline protective device for protection.

Since the recommendations provided by the coastal engineering consultant include measures to mitigate any adverse effects to the stairs from wave uprush, the Commission finds that Special Condition 7 ensures that the consulting engineering expert has reviewed the development plans and verified their conformance with the coastal engineers recommendations. The condition requires the applicants to submit two (2) full-size copies of the project plans that have been reviewed and approved by the engineering consultant prior to issuance of the coastal development permit. As such, Special Condition 7 guarantees that all final development plans are consistent with Section 30253 of the Coastal Act.

The applicants have stated that the new improvements would not necessitate protection from hazards such as flooding and/or wave attack now or in the future. The City is not proposing protection of the trail improvements as part of the current application. However, in hazardous circumstances the applicants could conceivably pursue protection of the structures in the future. As discussed below, a protective device, or enhancement of the existing protective device to protect the proposed development, would result in adverse effects to coastal resources.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's ability to utilize the beach. First, shoreline protective devices can cause

changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach, as it results in less usable sandy beach area.

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, this portion of San Clemente is subject to severe winter erosion. The Commission notes that if a seasonally eroded beach condition occurs with greater magnitude due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events, but also potentially throughout the winter season.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the trail improvements require a protective device in the future, it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion.

To assure that no additional protective device will be constructed in the future to protect the proposed trail improvements, the Commission imposes Special Conditions 8 and 9. Since the proposed development is taking place adjacent to the ocean in an area that is potentially subject to wave uprush, the Commission is imposing its standard waiver of liability special condition (Special Condition 8). Special Condition 9 requires that the applicants agree that no additional future shoreline protective device shall be constructed to protect the proposed trail improvements. Through these two special conditions, the applicants are notified that the project site is in an area that is potentially subject to flooding which could damage the proposed trail improvements and that the improvements cannot be protected through a new shoreline protective device or expansion of the existing one to afford protection to the proposed development. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development. In addition, these conditions insure that any potential future owners of the property will be informed of the risks, the Commission's immunity from liability, and that the trail improvements can not be protected through a new or enhanced shoreline protective device.

Section 30235 of the Coastal Act states that an existing structure can be protected when in danger

from erosion provided that the protective structure is designed to eliminate or mitigate adverse impacts on local shoreline sand supply. No work to the existing revetment is proposed. However, the stairways proposed along the seaward side of the revetment will require re-engineering of the existing rip-rap revetment to insure the stability of the stairways. The stairways will function similarly to the existing revetment and will not impact shoreline sand supply. Therefore, the proposed stairways and reconstruction of the surrounding rip-rap will not contribute to erosion of the site, nor place the structures at greater risk than presently exists.

To ensure the project minimizes risks to life and property, the proposed trail improvements must be properly maintained. As previously imposed by the Commission, Special Condition 4 requires the submittal of a Maintenance and Monitoring Plan for the vertical and lateral access improvements. The plan must demonstrate that the crossing structures are inspected and maintained to prevent unsafe access conditions and to ensure that damaged portions of the vertical access improvements do not enter the beach. The plan must also demonstrate that the barrier system along the lateral accessway provides effective safety controls and is functional throughout the life of the project.

As conditioned for conformance with coastal engineering recommendations, assumption of risk, no future shoreline protective device, and submittal of a monitoring and maintenance plan, the Commission finds that the proposed project is consistent with Sections 30235 and 30253 of the Coastal Act.

F. BIOLOGICAL RESOURCES

Section 30108.2 of the Coastal Act states:

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30233 (a) of the Coastal Act states,

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such*

boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

Section 30240 (b) of the Coastal Act states:

- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

The plans identify multiple vernal basins and sensitive areas within the project area. The *Jurisdictional Wetland Delineation* prepared by Merkel & Associates, Inc. states that two wetland microhabitats were found within the study area. These are located at the base of the slope adjacent to the Mariposa access ramp and immediately north of the Corto Lane pedestrian crossing. The areas are described as Emergent Wetlands, which represent “*unusually low quality habitats.*” The Mariposa wetland is approximately 400 feet in length and varies from about 1.5 to 2.5 feet in width. The Corto Lane wetland is approximately 90 feet in length and varies from 3 to 12 feet in width. Each is a seasonal wetland fed by urban run-off.

Neither of the Emergent Wetland areas will be impacted by the proposed project. The applicants have modified the project design to avoid these areas. At Mariposa, the proposed elevated boardwalk will be sited around the wetland area to avoid caisson placement in or near the wetland. At Corto Lane, the trail will avoid the area and a proposed culvert under the railroad crossing waiting area will provide free flow of water between an adjacent ditch and the area supporting marsh characteristics. During construction, a biologist will ensure that the potential wetland areas are fenced to avoid impact. After construction, the wetlands will continue to be protected from impact. Implementation of the trail will lead to better protection of the wetland resources because the trail will confine trail users to a specified corridor that will direct pedestrian and bike traffic away from the wetlands; whereas the current situation doesn't demarcate the wetlands, resulting in trampling of the wetland during the dry season. To ensure that the applicants avoid the wetlands in conformance with the plans submitted, the Commission imposes Special Condition 10. This condition requires that impacts to the drainages and wetlands be avoided and requires buffers around these areas. Consequently, the Commission finds the project consistent with Section 30233 of the Coastal Act.

Four (4) new pre-fabricated bridges are proposed to span existing drainage courses along the lateral trail at El Portal, Trafalgar, Riviera, and Montalvo. The Merkel and Associates report indicates that no direct streambed impacts will occur. However, the report describes evidence of wetland plant communities at Trafalgar Canyon, where an existing service road bridge will be reconstructed and moved further inland from the beach. The proposed bridge replacement will remain on the seaward side of tracks, outside of the extent of any wetland plants. No modifications to the existing drainage courses will occur. No impacts to potentially sensitive riparian habitat or wetland plants will occur. Further, the installation of native vegetation surrounding the trail will add buffering vegetation to the wetland areas and increase the overall presence of native vegetation in the project area, thus improving biological values. Therefore, the Commission finds the project consistent with Section 30233 of the Coastal Act.

The southern extent of the proposed project is located at Calafia State Park. The California Department of Parks and Recreation has reviewed and approved the proposed project and supports its implementation. The project is sited and designed to prevent impacts to the recreation area. In fact, the project will enhance public access and be compatible with the continuance of the recreational use of the site. Therefore, the Commission finds the project consistent with Section 30240 (b) of the Coastal Act.

G. WATER QUALITY

Section 30230 of the Coastal Act states, in pertinent part:

Marine resources shall be maintained, enhanced, and where feasible, restored.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states, in pertinent part:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials.

As described previously, the City of San Clemente proposes to improve lateral and vertical access along the railroad corridor. Segments of the proposed project are located landward of the railroad tracks and seaward of the coastal bluffs paralleling the coast. In some areas, the proposed improvements are located adjacent to storm drain channels leading to the ocean. Due to the project's location, there is the potential that polluted runoff from construction materials and equipment could enter existing storm drain channels, thereby contaminating coastal waters.

Storage or placement of construction materials and equipment, debris, or waste in a location which may be discharged into coastal waters would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance,

construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, sediment discharged to coastal waters may cause turbidity which can reduce foraging avian and marine species ability to see food in the water column. Therefore, to lessen the potential for pollutants and/or debris to appear on the sandy beach or enter coastal waters, the Commission imposes the following special conditions related to water quality. Special Condition No. 11 outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. Special Condition No. 12 requires that the applicants dispose of all demolition and construction debris at an appropriate location and informs the applicants that use of a disposal site within the coastal zone will require an amendment or new coastal development permit.

The overall drainage area and hydrology of the site will not be affected by the proposed improvements. The project involves the placement of decomposed granite where there is currently soil. As such, runoff from the project site will continue percolate on site, consistent with the Commission's typically recommended water quality practices.

Additionally, the project requires approval by the Regional Water Quality Control Board. While no modifications to the currently proposed project are anticipated at this time, any changes to the project as approved by the Commission shall be submitted to the Executive Director for a determination as to whether the changes require an amendment to this permit. Any changes that require an amendment shall not occur without an amendment to this permit.

Only as conditioned for appropriate storage of construction materials and equipment and appropriate disposal of debris, does the Commission find that the proposed development is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

H. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

I. Consistency with the California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been found to be consistent with the public access policies of the Coastal Act. Mitigation measures, in the form of special conditions, are imposed which require 1) evidence of approval(s) by other State and local agencies; 2) evidence of approval by USACOE; 3) submittal of final sign plan; 4) monitoring and maintenance of access improvements; 5) future improvements come back to the Commission for review; 6) maintenance of public access during construction; 7) conformance with coastal engineering recommendations; 8) assumption of risk; 9) no future protective device or enhancement of existing protective device; 10) wetlands avoidance; 11) construction best management practices; and 12) debris disposal site to be located at an appropriate site.

No further alternatives, or mitigation measures, beyond those imposed by this permit amendment, would substantially lessen any significant adverse impacts which the development would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.